IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

SA.No. 257 of 1994(E)

(AGAINST AS.17/1993 ON THE FILE OF THE SUB COURT, THALASSERY AND OS.160/1983 ON THE FILE OF THE MUNSIFF COURT, KUTHUPARAMBA)

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DEFENDANTS 2 & 3 AND LEGAL REPRESENTATIVES OF 1ST DEFENDANT/RESPONDENTS 2, 3 AND 7 TO 12/APPELLANTS:

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1. **DEVAKI AMMA, RESIDING AT KUNIYIL, KUTHUPARAMBA AMSOM, NARAVOOR DESOM, TELLICHERRY.**
2. **AMMU, ..DO...DO.....**
3. **K.P.PARVATHY, W/O.KRISHNAN NAIR, RESIDING AT KUNIYIL HOUSE, P.O.KUTHUPARAMBA.**
4. **K.SREEDHARAN, ...DO....DO.....**
5. **K.LAKSHMANAN, ...DO...DO.....**
6. **K.GANGADHARAN, ...DO...DO.....**
7. **K.LAKSHMI, ...DO....DO.....**
8. **K.BINDU, ...DO....DO.....**

BY ADV. SRI.V.V.ASOKAN
SRI.R.RAJESH
SRI.K.I.MAYANKUTTY MATHER

S.A.NO.257/1994

PLAINTIFFS & DEFENDANTS 4,5,6/APPELLANTS AND RESPONENTS 4 TO 6:RESPONDENTS:
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1. **KUNHIPARVATHI AMMA, D/O.ANANTHA KURUP, RESIDING AT KUNIYIL, KUTHUPARAMBA AMSOM, NARAVOOR DESOM, TELLICHERRY.**

2. **SARASWATHI AMMA, ...DO....DO.....**

3. **KUNHAPPA NAMBIAR, ...DO...DO....**

4. **SREEDHARAN NAMBIAR, ...DO...DO....**

5. **SREEDEVI AMMA, ...DO...DO....**

6. **INDIRA AMMA, ...DO.....DO.....**

7. **PREMANANDAN NAMBIAR, ...DO...DO....**

8. **SUSHAMMA AMMA, ...DO..DO.....**

9. **UNNIKRISHNAN, ..DO..DO..**

10. **K.N.BALAKRISHNAN NAMBIAR, S/O.NARAYANAN NAIR, MECHANIC SUPERVISOR, MARMA GOA, HARBER GOA.**

11. **K.N.SURESH KUMAR, S/O...DO..., MILITARY SERVICE ASSAN 3 COZ SIGNALS 60-L.S.C./o.4004 F.D.A.MB,C/O.99, APO.**

12. **K.N.REMANI AMMA, RESIDING AT CE KONAVALA INS SHILVAJI, MAHARASHTRA STATE 410402.**

BY ADV.SRI.C.P.KUNJHIKANNAN)
SRI.J.M.H.JOHN DAVID) R1 TO 9
SMT. A.C.VIDHYA

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NOS/436/1994 AND 285/1995 IN S.A.NO.257/1994

DISMISSED

12/09/2007 **SD/- M.SASIDHARAN NAMBIAR, JUDGE**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.SASIDHARAN NAMBIAR,J.

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S.A. NO. 257 OF 1994

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Dated this the day of September,2007

JUDGMENT

Defendants 2 and 3 and the legal representatives of the first defendant in O.S.160/1983 on the file of Munsiff Court, Kuthuparamba are the appellants. Plaintiffs 1 to 9 and defendants 4 to 6 are the respondents. Plaintiffs instituted the suit seeking a decree for recovery of possession on the strength of title contending that appellants are owners of the property which lies to the north of the plaint schedule property and they trespassed into a portion of the plaint schedule property and constructed a compound wall enclosing it as part of their property which is shown as B schedule property in the plaint and sought recovery of possession of plaint B schedule property. Appellants resisted the suit contending that respondents have no title or right to the property

which is within the compound of the appellants and it is to protect their property and to prevent respondents from reducing their property to their possession they constructed the compound wall and respondents are not entitled to the decree sought for. The trial court originally dismissed the suit. It was challenged by plaintiffs before District Court,Thalassery in A.S.69/1990. Learned District Judge on reappreciation of the evidence found that the dispute is on the exact boundary separating the property of appellants and respondents. The property which lies to the east and north of the property of respondents is that of the appellants. Learned District Judge found that though Exts.C1 to C7 reports and plan were submitted, the boundary was not correctly fixed and without fixing the boundary the dispute cannot be resolved. Learned District Judge further found that property of the appellants is in R.S.No.86/3B while that of the respondents is in R.S.No.86/3A2 and the real dispute is where exactly the survey boundary line

lies on the west and south of R.S.No.86/3B, which is the eastern and northern survey boundary line of R.S.No.86/3A2. Learned District Judge remanded the suit with a direction to remit the report to the same Advocate Commissioner to submit a further report after proper identification with the assistance of survey authorities. The Commissioner thereafter inspected the property along with the Superintendent of Survey as well as Taluk Surveyor and the Village Assistant and after proper identification submitted Ext.C8 report and Ext.C9 plan. As per Ext.C9 plan and Ext.C8 report the Commissioner found that a portion of R.S.No.86/3A2 falls within the property in the possession of the appellants and shown as plots A and plot C. Learned Munsiff on the evidence found that the survey line separating R.S.No.86/3B and R.S.No.86/3A2 is the bold line in black as marked in Ext.C9 plan and it is the survey boundary line and plots A and plot C falls within R.S.No.86/3B and therefore respondents are not entitled to the

decree sought for. The suit was dismissed. Plaintiffs challenged the decree and judgment before Sub Court, Thalassery in A.S.No.17/1993. Learned Sub Judge on reappreciation of evidence found that evidence of Dws.1 and 2 the Commissioner and the Surveyor with Exts.C8 report and C9 plan establish that the black dotted line is the survey boundary line separating R.S.No.86/3B and R.S.No.86/3A2 and plots A and plot C form part of R.S.No.86/3A2 and as respondents have title to that property they are entitled to recover possession of the same on the strength of title. A decree was granted directing appellants to surrender possession of plot A and C as marked by the Commissioner in Ext.C9 plan. It is challenged in the appeal.

2. The appeal was admitted formulating the following substantial questions of law.

1. Can plaintiffs be permitted to challenge the correctness of the survey boundaries separating R.S.No.86/3B and 86/3A2 as shown in the revenue

records, in view of section 13 of Kerala Survey Boundaries Act, 1961.

2. Whether first appellate court was justified in determining the survey boundary as a different line namely dotted line in Ext.C9, when plaintiffs have not filed a suit as provided under Section 14 of Kerala Survey and Boundaries Act, 1961 and that too in a suit filed after the period of one year provided in Section 14?

3. Learned counsel appearing for appellants and respondents were heard.

4. The argument of learned counsel appearing for appellants is that under section 13 of Kerala Survey and Boundaries Act (hereinafter referred to as the Act) when the survey of any land is completed and survey boundaries are fixed, it cannot be challenged except by filing an appeal under section 11 or a suit as provided under section 14 and that too within a period of one year and as respondents did not file any appeal and fixation of resurvey boundaries have become final

first appellate court was not justitifed in changing the resurvey line from the one fixed by the survey authorities to the one shown by the Commissioner in black dotted line in Ext.C9 plan. It is also argued that evidence establish that the survey boundary line separating R.S.No.86/3B, and R.S.No.86/3A2 is the one shown in bold line in black and not the dotted line and first appellate court has no authority to refix the survey boundary line as the dotted line and if so the disputed property could only be part of R.S.No.86/3B and respondents cannot claim title to that property. Learned counsel further argued that respondents are bound by the order of remand in A.S.69/1990 wherein first appellate court directed the trial court to fix the survey boundary line and decide the suit accordingly and when the trial court thereafter found that survey boundary line is the bold line in black, first appellate court was not justified in interfering with that decree finding that survey boundary in the Field Measurement Book is not

correct. It is therefore argued that the decree is unsustainable.

5. Learned counsel appearing for respondents argued that first appellate court on appreciating the evidence found that the resurvey boundary line is not the bold line in black as marked in Ext.C9 but the black dotted line, as marked by the Commissioner in Ext.C9 plan and the evidence establish that that dotted line is actually the survey boundary line and in such circumstance, the decree is sustainable.

6. Appellants are claiming title to the property in R.S. No.86/3B and respondents have title to the property in R.S.No.86/3A2. It is in such circumstance, in the order of remand first appellate court in A.S.69/1990 found that the dispute can be resolved only by fixing the survey boundary line and the western and southern survey boundary line and of R.S.No.86/3B which is the western and northern survey boundary line of R.S.No.86/3A2 is to be fixed. It is for that

purpose and finding that resurvey boundary line was not properly fixed by the Commissioner in the earlier plans, first appellate court remanded the suit with a direction to remit the report back to the Commissioner to identify the survey boundary line with the assistance of survey authorities. DW1 the Advocate Commissioner who is an experienced Senior Advocate of the Bar inspected the property along with the Superintendent of Survey and DW2 the Taluk Surveyor and Village Assistant and submitted Ext.C8 report and Ext.C9 plan. Ext.C8 report with the evidence of DW1 establish that Commissioner with the Survey authorities took three full days to locate correctly the survey boundary line as many of the survey stones which should have been there at the respective points were found missing. Ext.C8 report establish that with much difficulty points of each every survey stones were located, after proper verification from all the points and Ext.C9 plan was drawn thereafter. In Ext.C9 plan

separating R.S.No.86/3B and R.S.No.86/3A2, two boundaries lines are shown. One is in black bold line and the other in black dotted line. The trial court accepting the black bold line as the survey boundary, refused the decree. The first appellate court on reappreciating the evidence found that black dotted line is the survey boundary line and therefore decided the case accordingly and found that the disputed plots A and C form part of R.S.No.86/3A2 and not R.S. No.86/3B and granted the decree. The argument of learned counsel appearing for appellants is that first appellate court should have found that the black bold line is the survey boundary line in accordance with the survey boundary shown in the Field Measurement Book and not the black dotted line which is in an imaginary line shown by the Commissioner.

7. Ext.C8 report with the evidence of DW1 and 2 establish that as per the Field Measurement Book , the southern boundary line of R.S.No.86/3B which separates R.S.No.86/3A2, is having a measurement

of 93.6 metres and it is the line connecting ladder points 25 on the west and 27 on the east. The report and the evidence establish that ladder points 25 on the west and ladder point 27 on the east is respectively on the eastern and western points of the black dotted line and not the eastern and western points of the black bold line. The report as well as evidence establish that ladder points 25 and 27 were correctly fixed by the Commissioner. That aspect was not challenged either when DW1 was examined or DW2 the surveyor was examined. True, in chief examination DW2 the surveyor deposed that the bolded line is the survey boundary line. But in cross examination DW2 admitted that resurvey boundary line which separates R.S.No.86/3B from R.S.No.86/3A2 is the line which connects ladder points 25 and 27. If that be the case, the resurvey boundary line which separate R.S.No.86/3B and 86/3A2 cannot be the black bold line as marked in Ext.C9 plan but could only be the black dotted line. There is another

factor fortifying that conclusion. Exts.C8 and evidence of the Commissioner proves that on actual measurement, the length of line connecting ladder points 25 and 27, which according to the Field Measurement Book and the Commissioner is the resurvey boundary line, is having a measurement of 93.6 meters, which exactly is the length of the southern resurvey boundary line of R.S. No.86/3B as per the Field Measurement Book. The evidence of DW1 with Ext.C8 report establish that if the black bold line is taken as the resurvey boundary, its measurement is not 93.6 metres but 95 meters. Learned counsel appearing for appellants argued that the figure 95 written in Ext.C9 plan is not by DW2 the surveyor who prepared the plan as deposed by him and therefore no reliance can be placed on that measurement when DW2 deposed that the measurement of that survey line is 93.6 metres. In the light of Ext.C8 report where this aspect has been unambiguously stated by the Commissioner, I cannot accept that argument. The Commissioner in

Ext.C8 report with regard to the discrepancy in the measurements has stated as follows:-

> "The line meeting the point 25 and 27 is the correct sury sub division of R.S. Line - the east-west measurement exactly tally with the sub division measurement 936. This is shown in black dotted line in the plan. It is further found that the sub division line shown in the survey filed book as 936, which lies further south is 950 on ground and 936 put in the field map is wrong whereas 93.6 shown in black dotted line meeting points 25 and 27 is found to be correct on ground also."

When DW2 the Taluk Surveyor was cross examined with regard to the resurvey line he deposed that

as per Field Measurement Book the connecting line of off-set points 25 and 27 is the resurvey boundary lines separating sub divisions 86/3B and 86/3A and the black dotted line is the said line which separates the sub divisions. In the light of this evidence, first appellate court rightly found that the black dotted line is the resurvey boundary which separates R.S.No.86/3B and R.S.No.86/3A2.

8. What is provided under section 13 of Survey and Boundaries Act, 1961 is that when the survey of any land or boundary which has been notified under section 4 or ordered under section 5 has been completed in accordance with the orders passed under section 9, Section 10 or Section 11, Survey Officer shall notify that fact in the Gazette and unless the survey so notified is modified by decree of a Civil Court under the provisions of Section 14, the record of survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded. The

suit provided under section 14 is a suit by an aggrieved person against the determination of any boundary under section 9, Section 10, or 11 and it provides that such a suit shall be instituted within one year from the date of notification as provided under section 13, either to set aside or modify the determination. Respondents did not seek any modification or setting aside of the demarcation of the survey boundaries which was fixed under section 13 of the Act. The first appellate court also did not direct refixation of the boundaries. What was done is only to fix the exact resurvey boundary line in accordance with Field Measurement Book. When the evidence establish that the resurvey boundary line separating the sub divisions R.S.No.86/3B and 86/3A2 is the connecting line which connects the ladder points 25 and 27 having a measurement of 93.6 meters and Ext.C8 report with Ext.C9 plan and evidence establish that that resurvey boundary line could only be through the dotted line and not the

black bold line, the finding of the first appellate court that the disputed property forms part of R.S.No.36/3A2 is perfectly correct and that finding cannot be challenged on the ground that refixation of boundaries is final as provided under section 13 of the Act. It is more so, when it is proved that if the black bold line is taken as the survey boundary line, it will not be the connecting line of the ladder points 25 and 27 and its measurement also exceeds the measurement as shown in the Field Measurement Book. In such circumstance, I find no merit in the appeal. The appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

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M.SASIDHARAN NAMBIAR, J.

S.A..NO.619 /1994

JUDGMENT

7TH SEPTEMBER,2007